

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

ERIC E.,

Plaintiff,

v.

CIVIL ACTION NO. 5:21-cv-00566

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

ORDER

Pending are Plaintiff's Memorandum in Support of Plaintiff's Motion for Judgment on the Pleadings [Doc. 8], filed January 12, 2022, and the Commissioner's Brief in Support of Defendant's Decision [Doc. 11], filed February 10, 2022. This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Tinsley filed his PF&R on December 19, 2022. Magistrate Judge Tinsley recommended that the Court grant the Plaintiff's request to reverse the Commissioner's decision, deny the Commissioner's request to affirm her decision, reverse the final decision of the Commissioner, and remand this matter pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*" (emphasis


added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on January 3, 2023. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 12**], **DENIES** the Commissioner's request to affirm her decision, **GRANTS** the Plaintiff's request to reverse the Commissioner's decision [**Doc. 8**], **REVERSES** the final decision of the Commissioner, and **REMANDS** the matter pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: January 9, 2023




Frank W. Volk
United States District Judge